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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,997	06/08/2001	Jay A. Alexander	10981507-2	1007

7590 04/18/2006

AGILENT TECHNOLOGIES, INC.  
Legal Department, DL429  
Intellectual Property Department  
P.O. Box 7599  
Loveland, CO 80537-0599

EXAMINER
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AMINI, JAVID A

ART UNIT	PAPER NUMBER
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2628

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/930,997

Applicant(s)

ALEXANDER, JAY A.

Examiner

Javid A. Amini

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 58-65 and 68-76 is/are rejected.
- 7) ☒ Claim(s) 67 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Examiner's communication***

Examiner tried resolving the issue with the Attorney Michael G. Verga (Reg. No. 39,410) and left voice messages at 703-591-2664 ext. 2005, and Examiner did not receive any response regarding this issue up to today's date 4/14/2006.

***Terminal Disclaimer***

The terminal disclaimer filed on 2/21/2006 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of 6,320,577 has been reviewed and is NOT accepted.

An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).

***Allowable Subject Matter***

Claim 67 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application

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claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 58-65, 68-76 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 42 of U.S. Patent No. 6,320,577 B1 (hereinafter refer as 577). Although the conflicting claims are not identical, they are not patentably distinct from each other because:

The following pages are the comparison between the present Application claim 58 and the Patent 577 claim 1.

Present Application claim 58, line 1:

A method for use in an oscilloscope, the method comprising;

Examiner's comments: Applicant in claim 58 utilizes "an oscilloscope" (i.e. an oscilloscope is a signal measurement system) and in the patent, claim 1 line 67 indicated "a signal measurement system".

Patent 577 claim 1, at col. 31 lines 66-67:

An annotation system for graphically annotating measurement waveforms in a signal measurement system

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Present Application claim 58, lines 2-5:

receiving a time-varying analog signal; sampling the received time-varying analog signal.  
displaying a waveform on a graphical user interface based on the sampled time-varying analog signal.

Examiner's comments: Applicant in claim 58 utilizes "a time-varying analog signal" (i.e. the terms "a time-varying analog signal" is equivalent to the term "waveform" that refers to the shape of a graph of the varying quantity against time. An instrument called an oscilloscope can be used to pictorially represent the wave as a repeating image on a CRT or LCD screen).

Patent 577 claim, at col. 32 lines 1-3:

having a graphical user interface through which waveforms and measurement results are displayed on a display of the signal measurement system.

Present Application claim 58, lines 6-12:

displaying on the graphical user interface a first display element representing the function of displaying an annotation label, receiving an indication that an operator graphically selected first display element; displaying, on the graphical user interface, a display region through which the operator can enter wave-form-related data to be displayed in an annotation label.

Examiner's comments: The patent's claim language is broadly covered the claim's limitations in claim 1 of the present application.

Patent 577 claim 1, at col. 32 lines 3-5:

the annotation system constructed and arranged to enable an operator to graphically generate an annotation label containing operator-generated information.

Present Application claim 58, lines 13-17:

receiving through a user interface said waveform-related data to be displayed in said annotation label; and displaying said annotation label on said graphical user interface in visual association with a desired waveform feature, wherein said waveform-related data is displayed in said annotation label.

Examiner's comments: The patent's claim language is broadly covered the claim's limitations in claim 1 of the present application.

Patent 577 claim 1, lines 3-9:

the annotation system constructed and arranged to enable an operator to graphically generate an annotation label containing operator-generated information and to graphically alter the position of said annotation label such that said annotation label is positionally associated with a desired feature of a waveform displayed on said graphical user interface.

Regarding independent claim 68, the similarity of the rejection is the same as the rejection of claim 58.

Examiner's note: Technical terminology evolves due to the need for experts in a field to communicate with precision and brevity, but often has the (usually) undesired effect of excluding those who are unfamiliar with the particular specialized language of the group. This

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can cause difficulties to communicate. Examiner believes there is no need modifying the prior arts to meet the claimed invention, just using different technical terminology.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javid A. Amini whose telephone number is 571-272-7654. The examiner can normally be reached on 8-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kee Tung can be reached on 571-272-7794. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Javid A Amini  
Examiner  
Art Unit 2628

Javid Amini

A handwritten signature in black ink, appearing to read 'Kee M. Tung', with a long, sweeping horizontal stroke extending to the right.

**Kee M. Tung**  
**Primary Examiner**